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**NAVAL WAR COLLEGE
Newport, R.I.**

THE ECONOMIC IMPACT OF LAND USE RIGHTS IN RURAL VIETNAM

by

Richard Van Derostyne

CDR, USN

A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

01 November 2013

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ABSTRACT

The Economic Impact of Land Use Rights in Rural Vietnam.

Vietnam reformed its land use laws in 1993 providing new forms of virtual-ownership called Land Use Rights that are documented with Land Use Certificates. For the first time under the current regime, land use rights could be used as loan collateral and property rights could be legally rented and inherited. When the Land Use Certificates were first issued in 1993, they were issued for a 20-year period, which is currently ending. The author analyzes the effect of the 1993 law and subsequent reforms on production levels and economic impact, the current state of affairs with regard to reform effectiveness, and makes recommendations to extend reforms as a means to achieve additional tenure security, long term investment, and production capability.

INTRODUCTION

In 1993, Vietnam dramatically changed its land-use and land ownership system with hopes of improving productivity, encouraging investment, and generating revenue through taxation in a previously non-existent real estate market. Before 1993, Vietnam experienced a long period of land reform and experimented with multiple systems of managing farm properties. Historically, land use and land distribution, particularly in the rural environment have led to sources of conflict in the population; land reform was one of Ho Chi Minh's core issues. Under the current system, all property in Vietnam is collectively owned by the people and the state serves as their agent for administration.

In the pre-1950 era, a few wealthy owners held most of the country as private land. Approximately 3% percent of the population owned 60 percent of the property¹. After the Geneva Accords of 1954 divided the country, both nations redistributed lands to farmers using different models. South Vietnam oriented distribution toward an export model averaging 20 hectares per family; North Vietnam worked with smaller plots assigned to villages and co-operatives that averaged 0.53 hectares per household². The collectivization of North Vietnam's rural farmlands continued through unification in 1975 when they began to implement it in the southern areas as well. Collectivization failed to achieve sufficient production - agricultural growth averaged 0.7% from 1976 to 1980 with some years showing significant decline³. This path of poor productivity led the Vietnam to search for incentives to boost production.

In 1981, the Communist Party of Vietnam reformed its system of Production Brigades (40 - 100 farmers) and locally managed collectives to work the crops and feed the nation. Households were assigned growing contracts that were essentially quotas, to farm on

cooperative land holdings. Quotas were based on the 3 previous year's productivity, and any production above quotas could be kept or sold by the household⁴. The modest production incentives initially increased growth, but did not prove sufficient to sustain it, and by 1983, growth had declined. Vietnam supplemented its own food production through rice importation until the mid-1980's,

The continuing liberalization of the Vietnamese government's handling of land use rights and reforms it previously implemented have improved tenure security. However, they have not completely removed the underlying fear of expropriation that dis-incentivizes long term investment in projects and crops that can improve overall production. The Vietnamese government is at a bit of a crossroad because the initial Land Use Rights certificates are reaching maturity in 2013, and at the time of this report, the National Assembly is engaged in updating Land Use Rights laws and considering how to best handle expiring certificates.

Each successive reform that moves land use toward traditional style ownership, provides individual rights and incentives, and frees farmers to participate in a legitimate marketplace builds confidence in the system and increases production levels. Vietnam must further reform government control of land use to encourage investment and improve domestic agricultural production.

Chapter 1. Modern Land Use Rights Evolution

In 1988, the Vietnamese government established Resolution 10, which transferred control of agricultural lands from locally organized cooperatives to the farmers themselves. Under the new system, local commune authorities adjudicated land-rights allocations to individual households. Although allocation decision formulas were not standardized among regions, the general practice was to grant plot licenses based upon the number of available

farmers in each household. Plot locations were legislatively based on pre-1975 occupancy, which led to some disputes over who should be assigned which plot. Those decisions were handled at the cooperatives. An example that demonstrates the allocation criteria was noted by Do and Iyer. The household's land rights were determined based on a family-size calculation that was first reduced due to the absence of an adult family member who was serving in the military and further again due to the number of children who were younger than the locally-determined threshold farming-age⁵.

Original allocations were 15-year periods for plots planted with annual crops and 40-year periods for plots planted with perennial crops. The longer length certificates were intended to incentivize long-term investment in each household's licensed plot. However, certificates were completely non-transferrable which had the unintended consequence of countering investment motivation. Without the ability to generate or borrow capital that could sustain a household beyond a single year's harvest, farmers did not have means or the desire to invest in projects like improved irrigation or planting perennial crops. Perennial crops can take 3 or more years to generate a profit.

Most farms continued to cultivate annual crops such as rice and vegetables, and the associated 15-year licenses were not sufficient to counter tenure security concerns among most of the farming households. Because property rights are licenses and not ownership, expropriation was both permitted and relatively simple for the government. Actual expropriation events and short-duration certificates decrease tenure confidence and erode system effectiveness.

Under the rules established in Resolution 10, local communes could override crop and investment decisions if it was deemed necessary for regional benefit, particularly

concerning food security. Nevertheless, within the parameters of use licensed by the communes, households assumed responsibility for individual investment decisions and bringing their output to market.

Resolution 10 also provided for privatization of the agricultural markets and moved Vietnam's agricultural sector in accordance with the principles of the encompassing Doi Moi economic reforms. It generated a new market for farm equipment and livestock transactions because those assets were previously controlled by the local collectives.

The Vietnamese government again provided major reform to its real estate system under the Land Use Law of 1993. The new law created a greater form of virtual ownership and further advanced land-use rights, making them transferrable and providing limited marketability. It increased tenure security by establishing 20 year licenses for plots with annual crops and 50 year licenses for plots with perennial crops. For the first time under the rule of the Communist Party of Vietnam, households could mortgage, rent, sell, inherit, or otherwise transfer their land use rights. Local collectives still adjudicated land use certificates, but with their approval, rights could be marketed or inherited, and the transactions taxed. In theory, these reforms opened an avenue for farmers to secure capital required for long term improvements, they could use their certificates as collateral, and legitimate lending institutions would be more likely to lend to farmers. Also, these reforms provided an avenue for the more efficient producers to benefit by obtaining access to larger areas of land, the lesser producers to profit from certificate sales and land rentals, and the government could generate tax revenue from the land and certificate transactions, a process that allowed capitalizing on its largest resource: land.

The language of the Land Use Law is gender-neutral, and women are allowed to hold land use certificates. However, early-issued land use certificates have space for only one name, and Menon, Rodgers, and Kennedy noted that most certificates are assigned to male heads of household even if both are present in the home⁶. Later certificates have room for both names and households that are more progressive tend to list both parties on the certificate. Those more liberal households exhibit greater economic freedom with one or both heads of household supplementing household income through non-farming activities. Menon, Rodgers, and Kennedy also note a correlation between households with women as sole or joint certificate holders and lower household vulnerability to economic shock and poverty⁷. In 2001, a further update to the law mandated the issuance to both names when certificates are jointly held.

The 1993 reforms opened a rental market that was previously unavailable. Deininger and Jin explore the impact of the burgeoning rental market in Vietnamese production. What they found was both the sales and rental markets improved agricultural production. The rental market allows skilled farmers with limited land resources to expand their productivity onto rental lands. Lesser producing farmers are redirected into other areas of the economy, and the nation's agricultural sector improves as it seeks a form of efficiency equilibrium⁸.

The 1993 reforms resulted in increased productivity. Kirk and Tuan note a boom period for the subsequent 7 years where agricultural production increased by 4-percent annually.⁹ Though the long term production effects of de-collectivization cannot be completely isolated from the effects of the 1993, land reform law, Do and Iyer plausibly argue that post 1993 production improvements stem largely from increased confidence in tenure security.¹⁰

Summary

In Vietnam, land is owned collectively and managed by the Communist Party of Vietnam and its associated local communes, for whom land reform has been a persistent priority. The current system of virtual-ownership was implemented through two watershed legislative acts, Resolution 10 and the Land Use Law of 1993. Under the current system, household farms are run semi-autonomously in a more open market than has been available in recent times. These reforms overhauled the agricultural sector of the Vietnamese economy and increased production, transforming a system of farms that did not produce enough to feed the collectives into productive agricultural centers and making Vietnam one of the world's largest agricultural exporters, especially for rice. The semi-marketable nature of Farmer's land use rights has modestly increased tenure security but has not resulted in the larger market for transactions and credit anticipated with the 1993 reform.

Chapter 2. Problems with implementation

Practical establishment of the Land Use Right system has been slow and sometimes difficult. Do and Iyer note that the Vietnamese government did not supply guidelines for the enacting the reforms of 1993 for five years¹¹. Communes were directed to comply with the law regardless of the status of published guidance, which resulted in disparate levels of implementation and local rule interpretations that delayed full implementation of the system.

Do and Iyer also describe the allocation process. Individuals desiring farm plots for their households apply through their commune-level people's committee, which then passes the request to the District Bureau of Land Administration (DBLA). The DBLA assesses the land available for license distribution and completes surveys and tasks similar to title

searches in our own system. Later, a committee of representatives from the local, district, and provincial People's committees meet with the DBLA official for adjudication of the land certificate request. Additionally, neighbors must testify to the fact there are no boundary or usage disputes for the plot requested. The process takes weeks or months, and applicants can be ruled ineligible for a variety of reasons that vary from routine errors in their paperwork or unpaid taxes to previous unauthorized activity or occupation of the land.¹² In some cases, commune control is vested in one individual who can wield great power and influence in the community and can be susceptible to corruption and abuses.

Although land use certificates have improved the sense of tenure security among the farmers, Governmental expropriation of lands does indeed occur. When it does, it creates a perception that reduces the validity of the certificates. The system relies on confidence of its participants. Without full confidence in their own tenure security, farmers are reluctant to invest in projects that carry over multiple years waiting for an investment return, i.e. improved irrigation and perennial crops.

In areas of urban growth, like the rural areas surrounding Hanoi, governmental expropriation of land happens frequently. Suu estimates that between 1990 and 2003, nearly 700,000 hectares of farmland were reallocated to non-agricultural use. Under the current law, land planted with annual crops is compensated at a rate significantly less than land planted with perennial crops, actual compensation is made according to the specific crop¹³. In his analysis of the impacts of expropriation, Suu provides some 2007 compensation numbers used in the village Phu Dien, which is near Hanoi. Compensation for land use rights themselves was 108,000 dong per square meter and annual crops on the land resulted in 35,000 dong/sq. meter. One villager cited a case where compensation for perennial crops

was 2.5 to 3 times greater than compensation for annual crops. Other compensation included new vocation training for the farmer subsidized at a flat rate 25, 000 dong, and an additional 3,000 dong bonus offered for quick conduct of the transaction.¹⁴ At the December 2007 exchange rate of approximately 16,000 dong to 1 US dollar, land compensation was \$6.75 per sq. meter (\$27,316 per acre). Due to the disparate compensation rates for crops, Farmers learned to wait until they were aware that the government was planning to expropriate their land use rights, and then plant better-paying perennial crops.

Expropriation has life-long impact on the farming household because it removes the farmer's long-term income source and replaces it with a lump sum payout. That payout may only last a short time. Dis-propertied farmers must purchase household subsistence on the market rather than controlling their own security by growing enough to support respective households and providing surplus to the economy. Farmers must then find alternative employment, and Vietnamese Government programs to re-educate farmers for other industries have not produced sufficient off-farm employment opportunities to give confidence in the system. Some of the households near urban centers that are affected by expropriation have been able to capitalize on their residential licenses through construction and rental of additional rooms. This aids with household income and can be managed with relatively little time or physical activity required, and some households have left management duties to the elderly or to middle aged females.¹⁵ It does not effectively increase the household employment rates. Vietnam has also experienced Urban migration, and there is growing number of idle working-age youth and displaced farmers in these areas. This is a concern because concentrations of idle, unemployed, and dis-propertied people are can be fertile for civil unrest.

Land use rights in the agricultural sector were designed to increase production through long-term investment and generate revenue through taxation of an anticipated transaction market. While production has improved Vietnam's position as an exporter of several crops such as rice, coffee, pepper, and cashew¹⁶, high tax rates have led to the development of black market land use transactions, which by their nature are untaxable. Taxes on certificate transfers have historically been high at 10 percent¹⁷ and annual taxes can be 15- 20 % of total agricultural production for the plot.¹⁸ To counter these issues, land transfers have occurred through unofficial agreement. As one individual rents land from another and no legal transfer of rights is registered, the local government is prevented from collecting taxes on the transfer or exercising control over the land use. Due to the high annual tax rates, in some cases, households have walked-away from their farm lands with no profit; rent for the new user is simply the amount of taxes due¹⁹.

Should a farmer decide to enter into a project requiring significant capital, the necessary credit to complete improvements and establish perennial crops is not always available. In some rural areas, farmers have not had physical access to lending institutions because they lack the means to travel, but that situation seems to be improving. The systematically complex nature of land transfers makes retrieval of collateral for defaulted loans unnecessarily risky and discourages lending. Local communes have final adjudication regarding certificate transfers regardless of the loan agreement, and as a result, foreclosing lenders can find themselves unable to collect. Even transfers that are adjudicated in the lenders favor can endure a lengthy decision cycle that further adds risk to lending transactions and reduces a lenders capability to receive a return on investment, or reuse their capital for subsequent investments.²⁰

Summary

The Land Reform Law of 1993 had many positive effects on the Vietnamese agricultural sector, but the process has had issues with timeliness and consistency in awarding Land Use Certificates. When the rights are documented by these certificates, perceptions of tenure security are improved, but not to a sufficient level to generate widespread interest from farmers to make long-term investments. Lenders have also been unenthusiastic about investing in the agricultural sector because of communal (collective) governance of Land Use Rights that are prejudicial to non-local land use. Government expropriation has also reduced the tenure security effects, especially in areas that experience a high rate of government directed land use right transfers. Though the net effect of reforms to date is a significant increase in productivity, the local effect of the conditions and actions described has limited tenure security for farmers, made their collateral undesirable for lenders, and served as disincentive to engage in the Long Term improvements and planting regimen desired for growth and prosperity. The Vietnamese government should continue to relax its controls on property management.

Chapter 3. Counter Argument/Rebuttal

Some might say that the Vietnamese government's direct management of the property system should be continued. Overall, the Vietnamese economy and agricultural production have improved with the most recent reforms, and direct government control can prevent some undesirable consequences of a free market. It can increase survivability during economic shocks and reduce the impact of poverty, prevent rapid increases in landlessness, and the prevent consolidation of land in the hands of a few wealthy holders.

It is true there has been significant improvement in agricultural production, Kirk and Tuan estimate annual Vietnamese Gross Domestic Product growth at 7% from 1993 – 2000.²¹ The Nation-wide percentage of households with income below the poverty line decreased during the same period with poverty incidence rates dropping from 58 to 29 percent.²² Lastly, the reforms already in place have led Vietnam to be one of the world's largest exporters of rice. Direct government control over land use rights and household farming plots has been a great benefit to the Vietnamese economy.

However, this argument fails to recognize that the improvements thus far have not reached the desired ends for the agricultural sector. Farmers are not sufficiently confident in their tenure security to desire long term improvement of their farm lands, whether in land capacity or in the income potential of more expensive perennial crop species. This is not just a matter of finance for the individual household. It is a matter of increasing total GDP and ensuring food security for the nation, not just for the local cooperative. Forty-eight percent of the Vietnamese workforce is engaged in agricultural activity, yet agricultural yield comprises only 21.6% of Gross Domestic Product.²³ Farming that is more efficient has additional benefits of freeing labor to participate in the industrial and service sectors, two areas the government of Vietnam is leaning toward for continued economic growth.

With current reforms, lenders are not confident in their ability to recover on defaulted loans and have not embraced investment in household farming due to risk vs reward calculations. If the delays and negative decisions from local cooperative leaders are eliminated, lenders can reduce their risk. If the lender knows that he can reasonably recover loan collateral, and then reasonably re-sell to recover his investment, he will be more likely to provide the farmers the capital needed to invest in their own productivity.

Chapter 4. Current Status

Getting the next installment of land reform in-place and serving the farmer is immediately important to the Vietnamese government because Land Use Certificates expired in masse this year without a firm plan for the future.

The Vietnamese government made a blanket extension for existing certificates while the way ahead is debated and then decided in the National Assembly, which convened on 21 October 2013²⁴. This can only be a temporary measure because there will be a need for some re-allocation of land and they will have to do it with minimum impact on existing and functioning farms. The growing population requires housing, as well as food, and there are new eligible households who will need land use rights. Unfortunately, because allocation decisions are still conducted at the local level where officials can be corrupt or incompetent, some re-allocation has already occurred, and frustrated farmers expressed their displeasure through both violent and non-violent means.²⁵ Violent reaction to eviction attempts has embarrassed the government and further eroded faith in the current system²⁶. Corruption, incompetence and misunderstanding among local collective leadership is generating significant mistrust among farmers and uncertainty continues to dis-incentivize investment. The central government is investigating corruption complaints and has made some arrests²⁷ but the situation will not ease until the National Assembly has made a decision and promulgated their plan.

Some farmers championed a proposal in February of this year to increase the duration of Land Use Certificates to 50 years, regardless of crop and land use type. Others are calling for perpetual certificates that would provide defacto ownership yet maintain the foundational principle that all land belongs to the people.²⁸

If left unresolved, the issue has the potential to reduce stability in the nation. Acutely aware, the government of Vietnam is actively pursuing improvement and considering several proposals to amend the Land Law in ways that will satisfy farmers needs, increase investment in rural and agricultural development, and increase tenure security. Proposals include stricter limits on property expropriation and re-assignment and increasing certificate term lengths that would strengthen farmer's rights to the lands they farm. These key initiatives are further underscored by comments from USAID regarding the situation, "Compulsory acquisition of land by the state is a source of social conflict in Vietnam. In October 2012 the National Assembly began considering a new land law that is expected to address this and other issues."²⁹

The Vietnamese government did make a positive move to generate growth in the agricultural in September by directing the State Bank of Vietnam to extend preferential credit for agriculture and rural development³⁰. The order should increase capital availability in the rural areas, but until farmers are assured of their tenure for the next season, it is a hollow measure.

Summary

The expiration of Land Use Certificates without a permanent replacement and extension plan has disrupted farmer's productivity and generated resistance among portions of the population. Some corrupt or confused collective leaders have exacerbated the issue through ill-advised attempts to redistribute lands ahead of the National Assembly decision. Farmers are deeply concerned with their futures and have little confidence that they will retain their farmlands, but have made proposals that should remove doubt in the long term by

amending the laws to reduce instances of expropriation and increasing certificate term lengths.

CONCLUSIONS

Vietnam's Doi Moi associated land reforms and de-collectivization of its farming system have generated growth by reducing governmental controls on land ownership and crop management. Each step along the evolutionary path to a free market has improved agricultural output. When there are incentives, production will increase. When collectives were permitted to market production above quota, they saw improvement. When households were granted Land Use Certificates that increased tenure security, there was improvement. When tenure security was extended, enhanced, and rights were made transferrable, there was dramatic production improvement. The evidence shows that the largest single contributor to improvement is tenure security, which has improved as the Vietnamese government liberalized its regulation of the land and agricultural markets. The production gains generated by reforms enacted to date have largely played out. Production has increased, but somewhat stalled in the years since. The areas that have still been underexploited are household investment in plot improvement, transition to perennial and more profitable crops, and the encouragement of both the banking industry and farming households to use of collateral-backed loans to stimulate and expedite further agricultural gains. In order to do this, the Vietnamese government should either establish true private ownership or extend Land Use rights certificates to 99 years. They should also seek to further limit expropriation events and encourage investor-to-farmer negotiation for the transfer of rights rather than government directed transactions that can be difficult on individual households. to only

those most essential to basic welfare of citizens, such as food, water, shelter, and education. They should provide a mechanism to assure lenders access to collateral properties in the event of default and insure some of the lenders agricultural loans.

RECOMMENDATIONS

Using non-military instruments of national power, encourage the Vietnamese government to further enhance tenure security and privatize its land-holdings. A more open market for real estate transactions would result in buyer-seller relationships that can negotiate settlements for re-allocation lands, even for cross-purpose such as industry or housing. This would reduce the necessity for expropriation and the loss of confidence in tenure security that goes with it. Renewed confidence will remove a source of civil unrest. Some specific measures that would further these goals:

- Increase certificate time limits to 99 years or implement private ownership.
- Reduce taxes on real estate transactions and annual taxes by 50% to eliminate or reduce black market transactions.
- Use zoning laws rather than communal veto to determine land use and give lenders improved ability to recover collateral for defaulted loans.
- If private ownership cannot be established, provide an automatic renewal mechanism that defaults to continued tenure after certificate expiration.

These measures would increase confidence in the tenure system, and further encourage investment, lending, and production in Vietnam's agricultural sector.

NOTES

¹Quy- Toan Do and Lakshmi Iyer. "Land Titling and Rural Transition in Vietnam." *Economic Development And Cultural Change* no. 3 (2008): 531. *JSTOR Arts & Sciences VII*, EBSCOhost, accessed October 18, 2013

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⁶ Nidhiya Menon, Yana Rodgers, and Alexis Kennedy. "Land Rights and Household Welfare in Vietnam: Does the Gender of the Land-Rights Holder Matter?"

⁷ Nidhiya Menon, Yana Rodgers, and Alexis Kennedy. "Land Rights and Household Welfare in Vietnam: Does the Gender of the Land-Rights Holder Matter?"

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